IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5919 of 1999

with

CIVIL APPLICATION No 14227/99 and 11776/2000

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BARODA QUARRY ASSOCIATES

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 5919 of 1999

MR TUSHAR MEHTA for Petitioner No. 1

MR MUKESH R SHAH for Respondent No. 1-2

Mr.M.K.Patel, Asst.GOVERNMENT PLEADER for Respondent No. 3-7

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 09/05/2002

ORAL JUDGEMENT

Rule. with the consent of parties matter is finally heard today.

2. Heard Mr.Tushar Mehta for petitioner, Mr.M.R.Shah for respondent No.1 and Mr.M.K.Patel for respondent Nos 3 to 7.

3. Mr.Mehta for the petitioner submitted that the order has been passed along with order dated 27.5.99 whereby the mining operations of the petitioner are discontinued. Mr.M.R.Shah appearing for the respondent No.1 has submitted that with a view to make the mining operations easy certain directives have been issued and the order has been passed. This petition was admitted on 11.8.99 and on 10.12.1999 order has been passed against vacating the land. Mr.Tushar Mehta for the petitioner states that inspite of said order the petitioners have of their own have removed the machinery from the land in question, pending the petition the Civil Application No.11776/00 is filed by the petitioner for the reliefs, interalia, for directing the respondent Nos 1, 2 & 3 to reconsider the decision on the ground that similarly situated persons have been granted quarry lease whereas the petitioner is not given the same treatment.

4. Mr.Tushar Mehta submitted there were in all 40 applicants whose proposals were turned down by the Central Govt upon the proposal of the State Govt and subsequently the matter is reconsidered and 22 persons have been granted whose names are mentioned at page 9 of the Civil Application. Mr.Mehta, therefore, submitted that there is no reason why the petitioner's application should not be considered.

5. On behalf of respondent No.1 affidavit in reply is filed to the averments made in the Civil Application and it has been contended, interalia, that the State Advisory Group had recommended the Govt of Gujarat to identify one or two sites for locating mining areas in view of four parameters, namely, (i) mining sites located close to the forest boundary, (ii) having forest crop density less than 0.4, (iii) located atleast 300 Mtrs away from the monument and (iv) not cutting the base of Pavgarh hills. It is stated in the said affidavit that since the aforesaid 22 applicants were falling within the above four criteria the State Govt had recommended and ultimately the approval has been granted by the Central Govt. It is stated that the petitioners are not falling in the said categories.

6. The petitioner has filed affidavit in rejoinder to the aforesaid affidavit in reply of the respondent No.1 and it has been mentioned at the internal page 3 of the affidavit in rejoinder that the quarry of the petitioner is far away from the main Pavgarh hills and is away by 400 Mtrs from Minarak Masjid as per the actual measurement supplied by the Geological and Mining Department. It is also stated that so far as the forest density is concerned the same is also less than 0.1. The petitioner has further submitted that so far as the quarry Nos 9 & 10 are concerned, they belong to one Kantibhai A Patel and the same is situated much nearer to one monument, namely, Panchmahal Mosque as compared to the geographical position of the petitioner's quarry and in respect of the same said Kantilal Patel has been granted. It is also submitted by the petitioner that similar is the case of Quarry Nos 16,17,17A,16A,15A and 19 which are nearer to the Panchmahal Mosque compared to the quarry of the petitioner. Therefore, Mr.Mehta submitted that it is because of discrimination on the part of the Central Govt and even the Committee has also discriminated the petitioner and therefore the matter requires consideration and appropriate direction be given.

7. It is true that normally this court would not undertake the exercise of examining the disputed questions of facts and therefore merely because the allegations have been made by the petitioner it can not be said that the petitioners would be entitled to grant of quarry. However, at the same time, this court can not ignore if the discrimination is made by the authority concerned. Whether the discrimination is made or not can only be examined after physical examination of the place in question by the appropriate authority and if it finds that the petitioner did satisfy the above referred four criteria and inspite of the same the petitioner has been deprived of licence in comparison to those who were not satisfying the above referred four criteria, then the authority will have to reconsider the matter afresh and pass appropriate orders keeping in view the existing policy. So far as the actual physical verification of the place in question is concerned, the petitioner can not seek assistance of any private person.

8. Considering the above, I am of the view that the ends of justice would meet if the following directions are given:

"(A) The State Advisory Group shall undertake

exercise through the officers of the State Govt to measure the actual distance between the monument and the place of quarry and such exercise shall be undertaken at the cost of the petitioner. Mr.Mehta stated that the petitioner has agreed to pay the costs for undertaking such exercise.

(B) After the measurement is taken and comparative figure of distance of the places of other persons who have been granted quarry licence are also put on record, the State Advisory Group shall reconsider the matter afresh for examining the question as to whether the case of the petitioner should be recommended for grant of quarry licence keeping in view the aforesaid four criteria and the existing policy and thereafter the matter shall be forwarded to appropriate authority including the Central Govt which would ultimately consider the case of the petitioner whether to grant the quarry and if such recommendations are made, it will be for the Central Govt to take appropriate decision in the matter in accordance with law."

9. Mr.Mehta submitted that in case the grant of quarry is ultimately refused by the authority, then the material extracted which are lying on the place in question may be permitted to be removed. It is needless to say that if such material is lying on the place in question, the petitioner shall be permitted to remove the same under the supervision and after obtaining necessary permission from the competent authority.

10. In view of the above rule is made absolute to the aforesaid extent. There shall be no order as to costs.

11. In view of the above, Civil Application Nos.14227/99 and 11776/00 also stands disposed of.

5.4.2002 (JAYANT PATEL,J)